



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,557	09/21/2001	Albert F. Elcock	GIC-649	5897

20028 7590 08/23/2004

LAW OFFICE OF BARRY R LIPSITZ  
755 MAIN STREET  
MONROE, CT 06468

EXAMINER

KENDALL, CHUCK O

ART UNIT PAPER NUMBER

2122

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/960,557	<b>Applicant(s)</b> ELCOCK ET AL.	
	<b>Examiner</b> Chuck Kendall	<b>Art Unit</b> 2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is in response to the application filed 09/21/01.
2. Claims 1 – 20 have been examined.

### ***Claim Objections***

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 30 been renumbered 20, for purpose of Examining.  
Correction is required.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 - 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Metz et al. USPN 5,666,293.

Regarding claim 1, Metz anticipates a a software-code configurable digital appliance (39: 45 – 40:48, see device) and a method (41: 51 – 46:26) for operating in a network, comprising:

a storage component for storing different versions of at least one of firmware and application program code; and a processing component for:

(a) selecting an appropriate version of said at least one of firmware and application program code depending on predetermined criteria relating to said network (5:35 – 45, see operating systems and versions, for firmware), and

(b) loading the selected version into an operating component of said appliance to enable the appliance to operate in said network (5: 60 – 65, see downloading).

Regarding claim 2, a digital appliance in accordance with claim 1, further comprising rudimentary program code in non-volatile memory that permits initialization of said processing component (8:9 – 16, see non-volatile RAM).

Regarding claim 3 digital appliance in accordance with claim 1, further comprising a user interface operatively associated with said processing component for enabling a user to facilitate the selection of said appropriate version (8:24).

Regarding claim 4, a digital appliance in accordance with claim 1, comprising a television settop box (FIGURE 1, 100).

Regarding claim 5, a digital appliance in accordance with claim 4 wherein said network comprises a subscription television system (7:28 – 30, see requested by subscriber).

Regarding claim 6, a digital appliance in accordance with claim 5 wherein said processing component selects said appropriate version in response to the particular subscription television system to which said appliance is connected (5: 35 – 40).

Regarding claim 7, a digital appliance in accordance with claim 6 wherein said different versions are stored in said storage component during manufacture of the Appliance (FIGURE 1, see 12, software server).

Regarding claim 8, a digital appliance in accordance with claim 7 wherein said different versions are adapted to enable said settop to be deployed in any of a plurality of incompatible subscription television systems(5:33 – 35, different types of set-top terminals and see plurality of operating systems (*versions*)).

Regarding claim 9, a digital appliance in accordance with claim 1, wherein at least one of said versions comprises code to enable at least rudimentary communication between said operating component and said network (10: 30 – 35, see packets carrying information).

Regarding claim 10, which is the method version of claim 1, see rationale as previously discussed above.

Regarding claim 11, which is the method version of claim 7, see rationale as previously discussed above.

Regarding claim 12, which is the method version of claim 2, see rationale as previously discussed above.

Regarding claim 13, which is the method version of claim 3, see rationale as previously discussed above.

Regarding claim 14, which is the method version of claim 6, see rationale as previously discussed above.

Regarding claim 15, which is the method version of claim 8, see rationale as previously discussed above.

Regarding claim 16, which is the method version of claim 8, see rationale as previously discussed above.

Regarding claim 17, a method for configuring a digital appliance in accordance with claim 16, wherein said appropriate version is selected in response to the particular network to which said appliance is connected (9:38 – 45).

Regarding claim 18, a method for configuring a digital appliance in accordance with claim 10, wherein said operating component uses rudimentary default code if said network is not supported by the versions stored in said memory (36: 37 – 41).

Regarding claim 19, which is the method version of claim 9, see rationale as previously discussed above.

Regarding claim 20, a method for configuring a digital appliance in accordance with claim 19, comprising the further step of using said rudimentary communication to provide additional code to said operating component from said network, said additional

Art Unit: 2122

code providing at least one of (i) more sophisticated communication and (ii) additional functionality for said appliance (5:58, see operating system upgrade for additional functionality for said appliance).

### Correspondence Information

7. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Chuck O. Kendall who may be reached via telephone at (703) 308-6608. The examiner can normally be reached Monday through Friday between 8:00 A.M. and 5:00 P.M. est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached at (703) 305-4552.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

*For facsimile (fax) send to 703-7467239 official and 703-7467240 draft*

*Chuck O. Kendall*

Software Engineer Patent Examiner

United States Department of Commerce

  
**WEI Y. ZHEN**  
**PRINCIPAL PATENT EXAMINER**